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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/01/07

SPONSOR Taylor LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Street Gang Recruitment Penalties SB 151

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 49

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 Attorney General's Office (AGO)  
 Corrections Department (CD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 151 enhances the basic sentence for crimes committed in furtherance of criminal street gang activity, when a finding of fact shows that a felony listed in Subsection B of the bill was committed for the benefit of, at the direction of, or in association with a criminal street gang and with a specific intent to promote, further or assist in criminal conduct by gang members.

#### **The basic sentence of imprisonment is increased as follows:**

- An additional one year for a fourth degree felony
- An additional two years for a third degree felony
- An additional three years for a third degree felony resulting in death
- An additional four years for a second degree felony
- An additional six years for a second degree felony resulting in death
- An additional eight years for a first degree felony

The following felonies are subject to the enhanced penalty, as provided in Subsection B of the bill:

1. Homicide
2. Voluntary manslaughter
3. Aggravated assault
4. Assault with intent to commit a violent felony
5. Aggravated battery
6. Shooting at a dwelling or occupied building, or shooting at or from a motor vehicle
7. Aggravated stalking
8. Kidnapping
9. Sexual exploitation of children by prostitution
10. Dangerous use of explosives
11. Possession of explosives, explosive devices or incendiary devices
12. Criminal sexual penetration in the first, second or third degree
13. Criminal sexual contact of a minor
14. Robbery
15. Burglary
16. Aggravated burglary
17. Extortion
18. Aggravated fleeing a law enforcement officer
19. Harboring or aiding a felon
20. Aggravated assault upon a peace officer
21. Assault with intent to commit a violent felony upon a peace officer
22. Aggravated battery upon a peace officer
23. Bribery or intimidation of a witness or retaliation against a witness
24. Trafficking in a controlled substance
25. Unlawful taking of a motor vehicle
26. Money laundering
27. An attempt to commit any of the above felonies

## **FISCAL IMPLICATIONS**

There would also be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

The AGO suggests that this proposed statutory scheme seems to be modeled after the California's Street Terrorism Enforcement and Prevention Act. Portions of the bill will most likely be subject to constitutional challenges due to vagueness and First Amendment challenges concerning freedom of association..

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HB49.

## TECHNICAL ISSUES

According to the AGO the list of predicate felonies in subsection C makes that list exclusive. *State v. Bennet*, 2003-NMCA-147, 134 N.M. 705 (a list of statutory references is exclusive and precludes incorporation of other crimes into a scheme); *see also State v. McDonald*, 2004 - NMSC-033, 136 N.M. 417. Examples of typical gang crimes that are not included are armed robbery, unlawful taking of a motor vehicle, and aggravated battery on a peace officer, burglary, additional drug crimes, and unauthorized graffiti.

Voluntary manslaughter which is included in the list of predicate crimes [Subsection C (2)] is not a specific intent crime and not likely to ever be the subject of criminal syndicalism.

## OTHER SUBSTANTIVE ISSUES

The AGO notes that the legislature should be aware of a potential double jeopardy problem of a prosecution for recruitment in gang activity that is coupled with a charge of solicitation to commit any of the enumerated crimes. It is possible that prosecution for both offenses may be precluded under *State v. Swafford*, 112 N.M. 3, (1991), unless legislature makes clear its intent to permit prosecution under either or both theories.

EO/sb